

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 92-CR-81127-40
HONORABLE AVERN COHN

GREGORY BROWN,

Defendant.

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ORDER ALLOWING DEFENDANT TO FILE A NOTICE OF APPEAL

I.

This is a criminal case. In 1997, defendant was convicted by a jury of (1) conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846 and § 841(a)(1), (2) intentional killing, aiding and abetting, in furtherance of a continuing criminal enterprise (CCE), in violation of 21 U.S.C. § 848(e)(1)(A), and 18 U.S.C. § 2, and (3) using or carrying a firearm in relation to a drug offense, in violation of 18 U.S.C. § 924(c). Defendant was sentenced to life imprisonment.

On October 29, 2007, defendant filed a motion to reduce or modify sentence under 18 U.S.C. § 3582(c). On November 29, 2007, the Court denied the motion on the grounds that there has been no change to the sentencing guidelines, particularly the 2006 amendment to the application notes of U.S.S.G. § 2A1.1,¹ used to determine defendant's sentencing range. Thereafter, on December 10, 2007, defendant filed a motion to accept defendant's reply brief. On December 12, 2007, the Court granted the motion and found nothing in the reply brief altered its conclusion to deny the motion. On

¹This guideline provision calls for a sentence of life imprisonment in a case of premeditated killing or where death results from the commission of certain felonies.

December 29, 2007, defendant signed and mailed a motion for reconsideration which the Court received for filing on January 3, 2008. On January 9, 2008, the Court denied the motion for reconsideration.

On March 3, 2008, the Court received defendant's instant Motion to Accept Notice of Appeal as Timely Filed Pursuant to 4(c)(1), which defendant signed and mailed on February 26, 2008.

II.

Under Fed. R. App. P. 4(a)(1)(B), defendant had sixty (60) days from the date of judgment or order to file an appeal. In this case, the appeal time began from the Court's January 9, 2008 order denying defendant's motion for reconsideration and runs until March 10, 2008. As such, defendant is not yet late in filing a notice of appeal.

Defendant says he filed a placed a notice of appeal in the prison mail system for filing on January 15, 2008; however there is no record of a notice of appeal being received or filed in this Court. In any event, under Fed. R. App. P. 4(a)(5), the Court may extend the time to file an appeal provided certain conditions are met. Here, defendant filed his motion on February 26, 2008, before the appeal time has run. This is well within the time for filing a motion for extension of time. Defendant has ten (10) days from the date of this order, or until **March 17, 2008** in which to file a notice of appeal. See Fed. R. App. P. 4(a)(C).

SO ORDERED.

Dated: March 6, 2008

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Gregory Brown, 07163041, USP Allenwood, Box 3000, White Deer, PA 17887 on this date, March 6, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160